WP(C) 1394/2005
BEFORE
THE HON'BLE MR JUSTICE AMITAVA ROY

JUDGMENT AND ORDER (ORAL)

The petitioner has questioned the validity of the letter dated 15.02.2005 of the Registrar In-charge, Gauhati University (hereinafter also referred to as the 'University'), intimating him of his date of superannuation from service to be 28.02.2005, on completion of 60 years of age. This Court, while, issuing notice of motion on 23.02.2005, however, did not grant any interim protection to him.

2. I have heard Mr. G Uzir, learned counsel for the petitioner and Mr. Seikh Muktar, learned Standing Counsel, Gauhati University.

3. According to the petitioner, he had passed the matriculation examination under the University in the year 1961. After a brief stint, as Subordinate Engineer with the PWD Assam, from 1966-1970, he applied for the post of Estate Officer in the University in response to an advertisement to the said effect in the year 1979. After his selection, he was appointed as Estate Officer on 12.05.1980 and he accordingly joined the post on 23.06.1980. The petitioner has asserted that before the appointment letter to the said effect was issued, all his testimonials in original had been verified and scrutinized by the concerned authorities of the University. Although, the petitioner was initially appointed as Estate Officer, he was later designated as Officer on Special Duty (Estate) of the University. An agreement was entered between the petitioner and the University on 12.06.1989 embodying the service conditions.

4. The petitioner has stated that after passing the matriculation examination in the year 1961 under the aegis of the University with Roll Gau No. 550, he was issued a certificate bearing Sl. No. 2127 of 1961, in which his date of birth was recorded as 01.03.1945. As it was incorrect, the petitioner's actual date of birth being 01.09.1947, he applied before the competent authority of the University for correction thereof. In response to his application, his date of birth was corrected to 01.09.1947 in the said matriculation certificate. The same date of birth was accordingly recorded in the agreement, as well as the service book of the petitioner, which was opened on 28.04.1992. In the identity card, issued by the University to him, the date of his retirement was mentioned to be 01.09.2007.

5. The petitioner has averred that in the month of January 1998, he was directed to produce his original matriculation certificate in the Office of the Registrar of the University for verification, which he accordingly did on 20.01.1998, whereupon the Joint Registrar of the University issued an acknowledgement receipt to the said effect. Thereafter by a general order dated 03.06.2003, the University directed its employees to produce their original matriculation certificates in the Office of the Registrar for official verification of the records. As his original document was already with the University, the petitioner by his letter dated 19.06.2003 reiterated the above. It was therefore, that by the impugned letter, he was retired with effect from 28.02.2005.

6. The University in its written response, denied that any correction in the age of the petitioner had ever been made, as claimed by him. It maintained that no order for correction of his age was made in the roll sheet at any point of time. The University has asserted that the petitioner's age being 16 years, as per the roll sheet of 1961 in the matriculation certificate, he was rightly retired on 28.02.2005, on attaining 60 years of age. It has dismissed the document (Annexure B to the writ petition) represented to be the opening page of his service book and the acknowledgement receipt dated 20.01.1998 (Annexure C to the writ petition) to be fabricated documents.

7. Mr. Uzir, has urged that the petitioner's date of birth having been duly corrected to be 01.09.1947, in his matriculation certificate on his application and as necessary correction to that effect had been duly made in his service book, the impugned action of retiring him prematurely is illegal, arbitrary and unconstitutional. As the petitioner's service book, as well as the agreement entered into between the parties clearly record his date of birth to be 01.09.1947, he was entitled to continue in service till 31.08.2007 and therefore the impugned decision is discriminatory, null and void. According to the learned counsel, the stand taken in the counter is a desperate face saving plea of the University in the circumstances and being wholly untenable, is liable to be rejected. In any view of the matter, the impugned decision could not have been taken without affording a reasonable opportunity of hearing to him and on the count of violation of the principles of natural justice as well, the same is non est in law. In support of his submissions, Mr. Uzir, placed reliance on the decisions of this Court in 2001 (2) GLT 175 (YUMNAM SARAT CHANDRA SINGH and 2002 (2) GLT 94 (STATE OF MIZORAM & ORS. Vs. C. LALKIMA).

8. Refuting the above, Mr. Muktar, has assertively urged on the basis of the official records produced, that the claim of correction of the petitioner's date of birth in the matriculation certificate is a myth. Had such correction been effected, the same would have found manifestation in the contemporaneous official records, he urged. Referring to the matriculation roll sheet and the age condonation case register of the University, Mr. Muktar, has sought to impress upon this Court that in all cases of such corrections, the same bear corresponding entries therein. As there is none in case of the petitioner, the documents relied upon by him to substantiate his plea, are forged, he urged. With reference to the document (Annexure B to the writ petition) purported to be the opening page of the petitioner's service book, the learned counsel has contended that a mere look thereof, would suggest that the same had been incorporated subsequently and did not initially form a part of the records. He further argued that on a mere eye estimation, the signature of the dealing clerk appearing below the office seal on the said page, does not match with those appearing at other places at or about the same. Referring to a service book of another employee of the University, Mr. Muktar, has endeavoured to contend that the arrangement of the entries after the opening page of the petitioner's service book, are inexplicably different suggesting unauthorized interference therewith to promote his wrongful cause. The learned Standing counsel, however, on instructions from the representative of the University present in Court, admitted the existence of the agreement referred to in the writ petition. The authenticity of the photocopy of the agreement produced in course of the arguments was also not denied.

9. The rival submissions have received the due attention of this Court. The petitioner's date of birth, according to his version, though initially recorded as 01.03.1945, in his matriculation certificate had been altered to 01.09.1947 by the University on his application. The petitioner, however, has not disclosed the date of his application or of the correction so effected. Even a copy of the corrected matriculation certificate has not been produced, contending that the original thereof, had been submitted with the Joint Registrar of the Gauhati University. This assumes significance in view of the University's plea that no such correction had ever been made.
The opening page of the service book of the petitioner admittedly records his date of birth to be 01.09.1947, seemingly endorsed by the Registrar of the University on 24.09.1982. The said authority had certified that the petitioner's age had been verified as per the corrected matriculation certificate issued by the University to be 01.09.1947. The acknowledgement receipt dated 20.01.1998 by the Joint Registrar, University (Annexure c to the writ petition), prima facie evidences receipt of the corrected matriculation certificate in original by the said authority for official verification. The photocopy of the agreement dated 12.06.1989 between the petitioner and the University mentions his date of birth to be 01.09.1947. The petitioner had been appointed as the Estate Officer of the Uni

versity by letter dated 12.05.1980 of the Registrar of the University. The fact that he joined on 23.06.1980, in the said post as asserted by him, has remained unrefuted. The above fact finds reference in the recital of the aforementioned agreement. From the matriculation roll sheet of the University, no correction therein, vis- -vis the petitioner, is discernible, though necessary endorsements following such corrections against many similar entries are visible. The age condonation case register also reveals endorsements in support of age corrections /alternations in respect of other candidates. No entry in the name of the petitioner is available. The said register appears to be of the year 1965. Noticeably, the University did not disclose in its affidavit, the procedure followed in causing corrections in the matriculation certificate and the official records, in which the corresponding entries are made, as evidence thereof. On a pointed query made by this Court, the learned Standing counsel of University, on instructions received, conceded that though forgery has been alleged vis- -vis, the two documents annexed to the writ petition, till date no steps had been taken to identify the person (s) responsible to take appropriate legal, as well as disciplinary action against them. Admittedly, no notice had been issued to the petitioner before deciding to retire him with effect from 28.02.2005, accepting his date of birth to be 01.03.1945. The learned Standing counsel of the University has not been able to point out from the records produced or otherwise that the petitioner's date of birth had been recorded as 01.03.1945, in the University records.

10. This Court in UMNAM SARAT (Supra) and STATE OF MIZORAM Vs. c LALKIMA (Supra), had held that any alteration in the original date of birth of a Government servant entered at the time of appointment, if sought to be made by a competent authority, the principles of natural justice would have to be complied with.

11. On a consideration of the service book of the petitioner, the acknowledgement receipt and the agreement referred to hereinabove and after weighing the rival stands, I am of the view that the impugned order without affording a reasonable opportunity to the petitioner to represent against the decision preceding the same cannot be sustained in law. Mr. Muktar, on an interaction with the representative of the University in Court, submitted that the agreement is not traceable. This is extremely disquieting the University being a public institution and a custodian of essential and indispensable records. In my view, in the attending facts and circumstances, the service book of the petitioner, acknowledgement receipt and the photocopy of the agreement referred to above constitute overwhelming materials substantiating the petitioner's plea, which the records produced on behalf of the University failed to outweigh. The service book of the petitioner and the agreement unequivocally proclaim his date of birth to be 01.09.1947. The University in these circumstances, in all fairness ought to have accorded an opportunity of hearing to the petitioner before taking the impugned decision, which obviously visits him with serious detrimental consequences. The impugned order in the above premise, cannot be sustained and is thus interfered with.

12. As a result, the letter dated 15.02.2005, is hereby quashed. The petitioner as a corollary, would be reinstated in service with all consequential benefits. However, as the University on oath has alleged forgery of its records, liberty is granted to it to take appropriate steps in this regard and if, so advised to cause a departmental inquiry on the issue. Needless to say, if such an inquiry is initiated and if the imputations are established, it would be open for the underling to take necessary consequential action on the basis thereof. It is, however, made clear that if the University deems it necessary to adopt the above course, at all stages, the petitioner would be afforded all reasonable and meaningful opportunities of his representation. The petition stands allowed in the above terms. No costs.